

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB Lfv 17-01 Florida National Guard Foundation/DSO

SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Local, Federal & Veterans Affairs Subcommittee		Renner	Miller

SUMMARY ANALYSIS

Citizen support (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and also, for most, by a written contract with the agency the CSO or DSO was created to support.

In 2000, the Florida National Guard Foundation (FLNGF) became a DSO under the Department of Military Affairs (DMA). The mission of the FLNGF is to:

- Provide support to Florida National Guard members in times of emergencies and deployments;
- Honor and assist those soldiers and airmen who have sacrificed their health and well-being for the security of the state and nation; and
- Preserve the Florida National Guard's rich history so the sacrifices of the soldiers and airmen are not forgotten.

The FLNGF's primary function is to fund and administer an emergency financial assistance and a scholarship grant program for current members of the FLNG, and in some cases their families. All current members of the Florida National Guard are eligible to apply for both grant types.

The statutory authority for the DMA DSO is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the Legislature.

PCB Lfv 17-01 saves from repeal provisions of law authorizing DMA to establish a DSO.

PCB Lfv 17-01 does not appear to have a fiscal impact on state or local governments.

PCB Lfv 17-01 has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Citizen Support Organizations and Direct-Support Organizations

Citizen support (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and also, for most, by a written contract with the agency the CSO or DSO was created to support.

Prior to 2014, there was no formal review process in law to determine whether a CSO or DSO was established pursuant to such authorization, or whether the rationale for the authorization remained applicable.

Chapter 2014-96, Laws of Florida¹ established reporting and transparency requirements for each CSO or DSO that is created or authorized pursuant to law or executive order and created, approved or administered by a state agency. The CSO or DSO must report information related to its organization, mission, and finances to the agency it was created to support by August 1 of each year.² Specifically, a CSO or DSO must provide:³

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the DSO;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

Each agency receiving the above information from a CSO or DSO must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the CSO or DSO's website.⁴ Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO's submission and posting of this information.⁵ If a CSO or DSO fails to submit the required information for two consecutive years, the agency is required to terminate the contract between the agency and the CSO or DSO.⁶

By August 15 of each year, each agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.⁷

Lastly, a law creating, or authorizing the creation of, a CSO or DSO must state that the creation of or authorization for the CSO or DSO is repealed on October 1 of the 5th year after enactment, unless

¹ Section 20.058, F.S.

² Section 20.058(1), F.S.

³ Section 20.058(1)(a)-(f), F.S.

⁴ Section 20.058(2), F.S.

⁵ Section 20.058(4), F.S.

⁶ *Id.*

⁷ Section 20.058(3), F.S.

reviewed and saved from repeal through reenactment by the Legislature. CSOs or DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.

CSO and DSO Audit Requirements

CSOs or DSOs with annual expenditures in excess of \$100,000 that are administered by a state agency are statutorily-required to provide for an annual financial audit of accounts and records to be conducted by an independent certified public accountant. Such audit report is submitted by the CSO or DSO within nine months after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, or approval.⁸

Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of the CSO's or DSO's accounts and records.⁹ The Auditor General is authorized to require and receive any records from the CSO or DSO, or from its independent auditor.¹⁰

CSO and DSO Ethics Code Requirements

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.¹¹

Florida National Guard Foundation

The Florida National Guard Foundation (FLNGF) was founded as a non-profit organization in 1983 to provide charitable and educational aide in the form of money and other property and services. In 2000, the FLNGF became a DSO under the Department of Military Affairs (DMA).¹²

The FLNGF is a corporation not for profit, incorporated under Ch. 617, F.S., and is approved by the Department of State. The FLNGF must:¹³

- Be organized and operate exclusively to raise funds;
- Request and receive grants, gifts, and bequests of moneys;
- Acquire, receive, hold, invest, and administer in its own name securities, funds, or property;
- Support the processing of requests for assistance from the Soldiers and Airmen Assistance Program or similar programs, as directed by the Adjutant General; and
- Make expenditures to or for the direct or indirect benefit of the DMA or the Florida National Guard.

The FLNGF must also be determined by DMA to be operating in a manner consistent with the goals of DMA and the Florida National Guard in the best interest of the state.¹⁴

The mission of the FLNGF is to:¹⁵

- Provide support to Florida National Guard members in times of emergencies and deployments;
- Honor and assist those soldiers and airmen who have sacrificed their health and well-being for the security of the state and nation; and

⁸ Section 215.981, F.S.

⁹ Section 11.45(3), F.S.

¹⁰ Section 11.45(3)(d), F.S.

¹¹ Section 112.3251, F.S.

¹² Chapter 2000-258, Laws of Fla.

¹³ Section 250.115(1)(a), F.S.

¹⁴ *Id.*

¹⁵ FLNGF website, *Our Mission*, available at <http://www.floridanationalguardfoundation.org/> (last visited January 21, 2017).

- Preserve the Florida National Guard's rich history so the sacrifices of the soldiers and airmen are not forgotten.

The FLNGF's primary function is to fund and administer an emergency financial assistance and a scholarship grant program for current members of the FLNG, and in some cases their families. All current members of the Florida National Guard are eligible to apply for both grant types.

The FLNGF's emergency financial assistance program grants are provided to cover expenses relating to housing, food, child care, utilities, transportation, medical, and other immediate needs. The emergency financial assistance program also serves those who are eligible for the Soldiers and Airmen Assistance Program (see below).

The FLNGF's scholarship program provides grants to Florida National Guard members and their dependents pursuing advanced academic and vocational opportunities.

The FLNGF is governed by an eight-member board of directors who are appointed by the president of the board. The Adjutant General appoints the president.¹⁶

The FLNGF must operate under a written contract with DMA which must provide the following:¹⁷

- Certification by DMA that the FLNGF is complying with the terms of the contract and is doing so consistent with the goals and purposes of DMA and in the best interests of the state. The certification must be made annually and reported in the official minutes of a meeting of the FLNG.
- Reversion of moneys and property held by the FLNGF to DMA if the FLNGF is no longer approved to operate for DMA, to DMA if the FLNGF ceases to exist, or to the state if DMA ceases to exist.
- The disclosure of the material provisions of the contract, and the distinction between the DMA and the FLNGF, to donors of gifts, contributions, or bequests, including the disclosure on all promotional and fundraising publications.

Each year the FLNGF must submit to the DMA its annual budget and financial reports, federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023), and a federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).¹⁸

Additionally, the FLNGF must provide for an annual financial audit if its expenditures exceed \$100,000.¹⁹ For FY 2014-15, FLNFG expenditures exceeded \$100,000.²⁰

The FLNGF is funded primarily by individual and corporate charitable contributions. However, for FY 2016-17, the FLNGF received state funding for the first time, in the amount of \$500,000, to be used exclusively to support Florida National Guard members and their immediate families in circumstances of exceptional financial need.²¹

¹⁶ Section 250.115(2), F.S.

¹⁷ Section 250.115(3), F.S.

¹⁸ Section 250.115(6), F.S.

¹⁹ Section 250.115(7), F.S.

²⁰ FLNGF IRS Form 990 (2014), at <http://www.floridanationalguardfoundation.org/Reports/Tax%20Return%202014.pdf> (last visited February 14, 2017).

²¹ See 2016 General Appropriations Act (HB 5001), Line 2952.

Soldiers and Airmen Assistance Program

The Soldiers and Airmen Assistance Program²² (program) provides financial assistance and services to eligible servicemembers²³ of the Florida National Guard and eligible members of their families. The program is administered by DMA; however, the FLNGF is authorized to assist DMA in the processing of applications and the administration of the program. The FLNGF also funds the program.

Assistance authorized under the program may include:

- Housing
- Living expenses
- Vehicle expenses
- Health care expenses; and
- Other expenses not specifically enumerated but considered reasonable under the circumstances.

The financial committee of the FLNGF board is required to perform a review of financial transactions each quarter, and provide the results to DMA. The committee may also request the Office of Inspector General to conduct additional reviews.

Staff Review of the FLNGF

Section 250.115, F.S., the statutory authority for the DMA DSO, is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the Legislature. Staff reviewed the FLNGF to verify its compliance with Florida Statutes.

Staff reviewed relevant FLNGF records from fiscal year 2009-10 to present, and found that the FLNGF is an active DSO that supports the DMA primarily by providing emergency financial assistance and scholarship grants to members of the Florida National Guard.

Staff identified eight deficiencies in which the DMA and the FLNGF were not in full compliance with the applicable Florida Statutes. The deficiencies are administrative or procedural. The deficiencies are as follows:

1. **The DSO is required to submit a DSO report to the DMA by August 1 of each year (s. 20.058(1), F.S.)**
 - a. The DSO report was signed by and addressed to incorrect entities.
2. **DMA must publish the DSO report required by s. 20.058(1), F.S., on the DMA's website (see s. 20.058(2), F.S.)**
 - a. The DSO report is not available on DMA's website.
3. **The DSO is required to adopt a code of ethics that contains the standards of conduct and disclosures required under ss. 112.313 and 112.3143(2), F.S. (See s. 112.3251, F.S.)**
 - a. The DSO intends to adopt an amended code of ethics at its February 22, 2017 board of directors meeting.
4. **For each year the DSO's expenditures exceed \$100,000, it must provide for an annual financial audit and submit the audit to the Auditor General within nine months after the end of the fiscal year (See s. 215.981, F.S.)**
 - a. The DSO's annual expenditures exceeded \$100,000 in FYs 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, and 2014-15. The DSO has submitted the past due audits to the Auditor General on December 3, 2016.

²² Section 250.116, F.S.

²³ Section 250.01(19), F.S., defines a "servicemember" as any person serving as a member of the U.S. Armed Forces on active duty or state active duty and all members of the Florida National Guard and U.S. Reserve Forces.

5. **The DSO board of directors is required by s. 250.115, F.S., and the DMA-DSO contract to perform certain functions that necessitate at least one annual meeting.**
 - a. The DSO board of directors did not conduct an official board of directors meeting in 2010 and 2013. The board of directors is scheduled to meet on February 22, 2017.
6. **The DMA must annually certify that the DSO is compliant with the terms of the DMA-DSO contract. The DSO must report the annual DMA certification in the DSO meeting minutes (See s. 250.115(3), F.S.)**
 - a. The DSO application for certification was not signed by the appropriate authority.
 - b. The DSO did not submit its application for certification to the DMA prior to the deadline.
 - c. The DSO did not attach all required documents with its application for certification.
 - d. The DMA did not respond in writing to the DSO's application for certification in a timely manner.
 - e. The DSO did not report the annual DSO certification in its meeting minutes.
7. **The DSO is required to submit its annual budget to the DMA (See s. 250.115(6), F.S.)**
 - a. The DSO has not submitted its annual budget to DMA.
8. **Each quarter the DSO must review the financial transactions of the Soldiers and Airmen Assistance Program and provide the review to the DMA (See s. 250.116(6), F.S.)**
 - a. The DSO did not conduct the quarterly reviews of the Soldiers and Airmen Assistance Program and submit to the DMA.

In response to staff's findings, the DMA and the FLNGF developed an internal checklist of statutory requirements to ensure future compliance.

Effect of PCB LVF 17-01

PCB LVF 17-01 repeals s.250.115(8), F.S., providing for repeal of the section creating the DSO unless reviewed and saved from repeal by the Legislature. This will enable the DSO to remain in existence, correct any remaining noted deficiencies, and continue providing assistance and services to Florida National Guard members.

B. SECTION DIRECTORY:

- | | |
|-----------|---|
| Section 1 | Amends s. 250.115, F.S., saving from repeal the DMA direct-support organization, which is scheduled to repeal on October 1, 2017. |
| Section 2 | Provides an effective date of July 1, 2017. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By saving the DSO from repeal, members of the Florida National Guard will have another source for financial and direct assistance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

PCB LVF 17-01 neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

Appendix A

Table 1: Florida National Guard Foundation Total Annual Revenues²⁴							
FY 2009-10 through FY 2015-16							
Fiscal Year	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>Total</u>
Total Revenue	\$755,323	\$89,403	\$242,990	\$290,902	\$295,407	\$166,820	\$1,840,845

Table 2: Florida National Foundation Total Annual Expenditures²⁵							
FY 2009-10 Through FY 2015-16							
Fiscal Year	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>Total</u>
DSO Service Expenses	\$770,041	\$138,233	\$111,556	\$245,724	\$243,745	\$120,935	\$1,630,234
Administrative Expenses	\$79,585	\$18,662	\$10,387	\$7,856	\$9,313	\$8,762	\$134,565
Fundraising Expenses	\$0	\$0	\$0	\$92,735	\$51,643	\$1,000	\$145,378
Total Expenditures	\$849,626	\$156,895	\$121,943	\$346,315	\$304,701	\$130,697	\$1,910,177

²⁴ Data retrieved from the FLNGF's IRS Form 990, Part VIII.

²⁵ Data retrieved from the FLNGF's IRS Form 990, Part IX.